Nos. 81-2265 and 81-2276

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

STATE OF NEVADA,
Petitioner,
v.
UNITED STATES OF AMERICA, *et al.*,
Respondents.

TRUCKEE-CARSON IRRIGATION DISTRICT,
Petitioner,
v.
UNITED STATES OF AMERICA and
PYRAMID LAKE PAIUTE TRIBE OF INDIANS,
Respondents.

BRIEF OF AMICI CURIAE STATES IN SUPPORT OF PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-2245

STATE OF NEVADA,

Petitioner,

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UNITED STATES OF AMERICA, *et al.*,

Respondents.

No. 81-2276

TRUCKEE-CARSON IRRIGATION DISTRICT,

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Respondents.

BRIEF OF AMICI CURIAE STATES IN SUPPORT OF PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

For the reasons set forth in the Amicus Brief of the States of California, Idaho, Montana, North Dakota, Oregon, South Dakota, Texas, Utah and Wyoming, the Petitions for Writs of Certiorari of Nevada and T.C.I.D. should be granted.

The undersigned States also support the Nevada and T.C.I.D. Petitions because of the broader need to retain finality in all litigation brought by the United States in connection with property rights which have been relied upon by States and private citizens. The trial court found an investment of billions of dollars by the *Orr Ditch* defendants since 1944 in reliance on the water rights set forth in the *Orr Ditch* Decree and there has been a very steady population growth in the area since

the entry of that Decree (Nevada App. 189a, Record on Appeal, pp. 4205-06). Yet the Government asserts the right to relitigate property rights, the titles to which were quieted in its own name, and avoid *res judicata* by claiming its own impropriety in the prior litigation. Though the Ninth Circuit rejected the Government's position as to most of the defendants, allowing the Government to re-open the Reclamation Project rights against T.C.I.D. on the dubious basis of a pleading technicality in 1913, puts in jeopardy property rights long relied upon to be secure.

Even if it is assumed that the Government's representation of the Pyramid Lake Tribe was improper and inadequate—an assumption refuted by the District Court's finding and not overruled by the Court of Appeals—the remedy ought not be the taking of property of innocent parties without compensation. If a wrong is to be remedied, the United States should be the party to answer for it. The record below shows that the United States has attempted to set matters right.[1, 2] The water rights

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[1] The Finding of Fact No. 30 of the trial court found at Nevada App., pp. 190a-191a, reads as follows:

> "30. The Congressional, Executive and Judicial branches of the federal government have recognized, confirmed, dealt with and recompensed the Tribe for the taking or loss of the alleged fishery purposes water right in many actions taken both before and after the entry of the final decree in Orr Ditch. These include, but are not limited to, the following:
>
> a. The Congressional, Executive and Judicial decisions in respect of and leading to the final decree in Orr Ditch.
>
> b. The many Acts of Congress and the appropriations and expenditures by the federal government made pursuant thereto as reflected, for example, by Exhibit No. V-439, which does not include cooperation and expenditures by the State of Nevada, of sums exceeding $32,000,000.00 during the period 1973 to 1976 alone.
>
> c. The additional $8,000,000.00 awarded to the Tribe in Docket No. 87-B, on the 23rd day of July, 1975, by the Indians Claims Commission (36 Ind. Cl. Comm. 256) spe-

relied upon by the Reclamation Project families should not now be the subject of relitigation because those rights do not belong to the Government. See *Ickes* v. *Fox*, 300 U.S. 82 (1937).

CONCLUSION

For the reasons set forth in the Amicus Brief previously filed by nine other States and further elaborated herein, the Petitions for Writs of Certiorari of Nevada and T.C.I.D. should be granted.

Respectfully submitted,

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cifically as damages for the loss of the Tribe's alleged (but denied herein) Winters reserved water rights for the Pyramid Lake fishery and other alleged water rights. That the findings, reservations and conclusions therein contained, based upon stipulation, are ineffective as against the defendants in these proceedings and are not binding on this court in this proceeding."

[2] The Court of Appeals reversed the District Court ruling that the Tribe's claimed right had been taken and extinguished.